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91 N. Y. Supp. 436). In *People ex rel. Schau v. McWilliams* (185 N. Y. 92, 101, 77 N. E. 785, 787), the court said:

If the action of the [civil service] commission is not palpably illegal, the court should not intervene.

See also *Darling v. Maguire* (70 Misc. Rep. 597, 129 N. Y. Supp. 385, 386).

We must conclude that the appointment of the plaintiff was in compliance with the statutes, and that it is therefore legal, notwithstanding the mistake made by the civil service commission in giving the plaintiff his markings on the examination. It necessarily follows that the plaintiff is legally health commissioner of Kansas City, and the judgment of the district court is therefore affirmed. All the justices concurring.

### NEW YORK SUPREME COURT—APPELLATE DIVISION—THIRD DEPARTMENT.

#### Ivy Poisoning—Compensation Awarded to Workman's Widow for Death Resulting Indirectly from Poison Ivy.

*PLASS v. CENTRAL NEW ENGLAND RY. CO.*, 155 N. Y. Supp., 854. (Nov. 10, 1915.)

Death resulting from "blood poisoning" and "congestion of the lungs" following contact with poison ivy is accidental within the meaning of the New York workmen's compensation law.

A workman, while mowing grass, came in contact with poison ivy. He became ill, "blood poisoning" developed, he contracted "congestion of the lungs," and death followed. The New York workmen's compensation commission awarded compensation to his widow, and the court affirmed the award.

JOHN M. KELLOGG, J.: Plass was a section laborer, and, as such, in the course of his employment, was mowing the right of way of the appellant's railway. This was done every year, and the men were engaged several days in performing that duty. The object in mowing the grass was for the safety of the bridges, the adjoining properties, to keep fires from spreading, and to prevent the grass coming up on the tracks, thus causing the engines to slip. In the grass was growing poison ivy and other weeds, and while mowing Plass came in contact with the ivy and was poisoned, became sick and confined to his bed, resulting in blood poisoning, where he contracted congestion of the lungs, from which he died August 29, 1914. The remote cause of his death was the ivy and septic poisoning, and the immediate cause of his death was acute congestion of the lungs, to which his poisoned condition predisposed him. Such are the findings of the commission.

It has been held that contact with poison ivy which results in death is an accidental death within a policy covering death by external, violent, and accidental means. *Railway Ass'n v. Dent*, 213 Fed. 981, 130, C. C. A. 387, L. R. A. 1915A, 314. The injury can not be called an occupational disease. Plass actually, inadvertently, came in physical contact with poison ivy. The poison to his system caused thereby resulted in his sickness, and reduced his power of resistance, and made him susceptible to bronchitis. The attending physician treated him for ivy poisoning, and then found he had developed more or less infection, the blebs breaking open, and in that way he became infected, and while in bed contracted bronchitis, which afterward developed oedema of the lungs, and he died quite suddenly.

The commission has found that the ivy and septic poisoning was the remote cause of his death, and that his poisoned condition predisposed him to the acute congestion of the lungs of which he died. We are not at liberty to review the findings of the commission upon a question of fact. There is certainly some evidence to warrant the finding.

The award is therefore confirmed. All concur.